

**REMARKS**

Claims 1-25 are currently pending in this application. By this Amendment, claims 3, 9, 12, 16, and 23-25, are cancelled, claims 1-2, 4-5, 10-11, 13, and 17-18 have been amended, and new claim 26 has been added. The amended claim set is provided herewith. The amendments are supported by at least paragraphs [0018]-[0019], [0022], [0027], and [0039] of the application as published.

It is believed that in view of the above amendments and below remarks the pending claims are in condition for allowance. If the Examiner believes that any further issues need to be resolved, the Examiner is invited to contact the undersigned at anytime.

**Rejection of the Claims Under 35 U.S.C. § 101**

Claims 1-8 were rejected under 35 U.S.C. § 101 for failing to provide support to the claimed invention by a specific or substantial asserted utility. Claim 3 has been amended and therefore the rejection of claim 3 is moot. Furthermore, without confirming the correctness of this rejection, claim 1 was amended to further highlight the utility of the present invention and to expedite allowance. Claim 1 was amended to recite a limitation requiring "delivering a therapy to the patient as a function of the estimation." Claims 2 and 4-8 depend directly or indirectly on claim 1 and therefore incorporate this limitation. Withdrawal of this rejection is respectfully requested.

**Rejection of the Claims 35 U.S.C. § 112**

Claims 1-8 have been rejected to as being indefinite under 35 U.S.C. § 112 for failing to teach someone of skill in the art how to use the claimed invention. As discussed above, claim 1 has been amended to include a limitation requiring "delivering a therapy to the patient as a function of the estimation." Without confirming the correctness of this rejection, it is believed that this amendment addresses the Examiner's rejection. Withdrawal of this rejection is therefore respectfully requested.

Rejection of the Claims Under 35 U.S.C. § 102 and § 103

Claims 1-25 were rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over, U.S. Publication No. 2002/0156462 to Mark R. Stultz ("Stultz"). Claims 3, 9, 12, 16, and 23-25 were cancelled and therefore the rejection of these claims is moot. In regards to the remaining claims, Stultz does not teach, suggest, or disclose all of the limitations of independent claims 1 and 13, as amended. Moreover, claims 1 and 13, as amended, do not read upon Stultz. Applicants therefore respectfully assert that the claims as amended are not anticipated or unobvious. Withdrawal of these rejections is respectfully requested.

Stultz teaches an implantable pump system with body sensors that sense "various physiological parameters." Par. [0012]. The pump delivers "a programmed amount of one or more medications selected as a function of the sensed physiological condition." *Id.* The physiological parameters listed by Stultz include "muscle tone, heart rate, respiration rate, blood oxygen saturation, tissue impedance, physical activity, body position . . . body temperature, glucose level, and the like." Par. [0030].

In contrast, amended claim 1 requires "measuring an electrical activity of the patient's gastrointestinal tract" and amended claim 13 requires "a sensor to sense an electrical activity or peristaltic motion of a gastrointestinal tract of a patient." Stultz does not teach, suggest, or disclose sensing the electrical activity of a patient's gastrointestinal tract or a sensor that senses the electrical activity of a gastrointestinal tract or peristaltic motion. The physical contact mentioned by Stultz is physical exercise-style activity of the patient. See par. [0229]. As stated in the Office Action, "Stultz does not specifically teach that the sensed parameters are related to food intake." Office Action, October 20, 2006, at 3.

In order to anticipate a claim, a reference must include every recited claim element, expressly or inherently. Since Stultz does not teach, disclose, or suggest all of the limitations of amended independent claims 1 or 13, Stultz does not anticipate claims 1 and 13. Applicants therefore respectfully request the Examiner to withdraw the rejection of claims as anticipated based upon Stultz.

In addition, since Stultz does not teach, disclose, or suggest all of the limitations of amended independent claims 1 or 13, the Office Action does not present a *prima facie* case of

obviousness of amended claims 1 and 13. Applicants therefore respectfully request the Examiner to withdraw the rejection of claims as obvious based upon Stultz.

Claims 2, 4-8, 10-11, 13-15, and 17-22 depend directly or indirectly upon independent claims 1 and 13. Claims 2, 4-8, 10-11, 13-15, and 17-22 are therefore allowable for at least these same reasons.

#### New Claim 26

New independent claim 26 was added by the present Amendment. It is believed that new claim 26 is allowable for at least the same reasons as given above for independent claim 13. In particular, new claim 26 recites "measuring peristaltic motion" of a patient's gastrointestinal tract, "estimating the quantity of food consumed by the patient as a function of the peristaltic motion of the gastrointestinal tract," and "delivery treatment to the patient as a function of the estimation." Allowance of claim 26 is therefore respectfully requested.

#### CONCLUSION

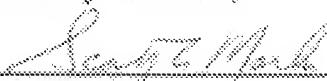
In view of the foregoing amendments, Applicants respectfully request reconsideration and allowance of the claims as all rejections have been overcome. Early notice of allowability is kindly requested.

The Examiner is respectfully requested to contact the undersigned by telephone at 763.505.0409 or by E-mail at [scott.a.marks@medtronic.com](mailto:scott.a.marks@medtronic.com) with any questions or comments.

Please grant any extension of time, if necessary for entry of this paper, and charge any fee due for such extension or any other fee required in connection with this paper to Deposit Account No. 13-2546.

Respectfully submitted,

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